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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,267	01/22/2001	Raphael Angeline Alfons Ceulemans	CM1882	5069

27752 7590 12/17/2003

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER	
DELCOTTO, GREGORY R	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 12/17/2003

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Paper No. 3

Application Number: 09/744,267
Filing Date: January 22, 2001
Appellant(s): CEULEMANS ET AL.

Mark A. Charles
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/5/03.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1, 4-6, 8, 9, and 12-14 stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

WO98/12295	LEURENTOP ET AL	3-1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 4-6, 8, 9, and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/12295. This rejection has been maintained for the reasons of record set forth in Paper #8. Note that, the Examiner indicated that claim 14 would be rejected upon the filing of an Appeal Brief.

(11) Response to Argument

With respect to WO '295, Applicant states that there is not teaching or suggestion in WO '295 of compositions that can be used as scum reducing agents. Further, Applicant states that the combination of a dye fixing agent and an aminofunctional polymer disclosed in WO '295 is used to provide improved color appearance of laundered fabrics. In response, note that, the Examiner asserts that the instant claims are drawn to "fabric care compositions" and not "scum reducing agents" as indicated by the claim preamble of instant claim 1. The compositions disclosed by WO 98/12295 are also drawn to fabric care compositions. The scum reducing agent (component ii) is a separate agent of the overall fabric care composition. Furthermore, WO '295 teaches the use of the compounds which are the same as those listed as the scum reducing agents of claim 1 (i.e., C12-C14 (coco) choline ester; See page 31, lines 15-30 of WO 98/12295). Note that, while WO '295 teaches the use of these compounds as single long chain alkyl cationic surfactants and the instant claims call them "scum reducing agents", the Examiner asserts that these compounds would have the same scum reducing properties as those compounds recited by the instant claims because they are the same compounds. In support, note that, products of identical chemical composition

can not have mutually exclusive properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). See MPEP 2112.02. Additionally, the reason or motivation to modify the reference may often suggest what the inventor has done, but for a different purpose or to solve a different problem. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. In re Linter, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972. See MPEP 2144.

Also, Applicant states that the Examiner is using improper hindsight reasoning to reject the claims as obvious. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The Examiner maintains that WO '295 provides clear motivation to use a nitrogen dye fixing agent in combination with a "scum reducing compound" as recited by the instant claims. Thus, the Examiner asserts that the rejection of the instant claims under 35 USC 103(a) is proper.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
December 12, 2003

Conferees
Dr. Yogendra Gupta
Patrick Ryan

YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224